

STATE OF MICHIGAN
COURT OF APPEALS

BELINDA L. HARTLINE,

Plaintiff-Appellee,

v

DANA CORPORATION and SPECIALTY RISK
SERVICES, INC.,

Defendants-Appellants.

UNPUBLISHED

April 8, 2003

No. 233601

Cass Circuit Court

LC No. 00-000249-NO

Before: Gage, P.J., and Wilder and Fort Hood, JJ.

PER CURIAM.

Defendants appeal, by leave granted, the circuit court's judgment in favor of plaintiff. We vacate the judgment.

Plaintiff sustained a severe electrical shock while employed by defendant Dana Corporation (defendant). The force of the shock threw her against a concrete wall, knocking her unconscious. Plaintiff suffered severe and permanent injuries predominantly to the right side of her body. Plaintiff was originally granted an open award of worker's compensation benefits by order of a worker's compensation magistrate. Defendant was ordered to pay reasonable and necessary medical care for those conditions found to be work-related. Defendant exhausted appellate remedies, but was denied relief. Following these appeals, plaintiff sought a compliance hearing before the director of the bureau, based on defendant's failure to pay for certain medical care and treatment. The director issued an order limiting the scope and application of the original order of the magistrate to conditions affecting plaintiff's right side. Defendant appealed this order, and plaintiff moved to dismiss the appeal.

Despite the pending appeal from the director's decision, plaintiff filed a complaint in circuit court for entry of a judgment pursuant to MCR 418.863. Defendant opposed entry of the order because of the outstanding appeal from the director's decision and alleged that payment of medical expenses had continued while the claim was in dispute. The trial court rejected defendant's argument and entered an order enforcing the magistrate's award to plaintiff of all reasonable and necessary medical expenses attributable to the work-related injury. At the time of the filing of this claim of appeal from the circuit court's entry of judgment, the appeal of the director's decision was still pending.

Defendant alleges that the circuit court erred in entering judgment on an issue that was contemporaneously on appeal before the Worker's Compensation Appellate Commission (WCAC). We agree. Whether the circuit court had proper subject matter jurisdiction is a question of law for this Court to decide. *Dlaikan v Roodbeen*, 206 Mich App 591, 592-593; 522 NW2d 719 (1994). A question of law is reviewed de novo. *Rinke v Potrzebowski*, 254 Mich App 411, 414; 657 NW2d 169 (2002). Section 863 of the Michigan Worker's Disability Compensation Act provides:

Any party may present a certified copy of an order of a worker's compensation magistrate, an arbitrator, the director, or the appellate commission in any compensation proceeding to the circuit court for the circuit in which the injury occurred, or to the circuit court for the county of Ingham if the injury was sustained outside this state. The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance with the order unless proof of payment is made. The judgment shall have the same effect as though rendered in an action tried and determined in the court and shall be entered and docketed with like effect. [MCL 418.863.]

A decision by the commission on review must be positive and unqualified to permit a judgment to be entered in the circuit court. *Harris v Castile Mining Co*, 222 Mich 709, 711-712; 193 NW 855 (1923). An order that does not fix an amount of compensation to be awarded is not enforceable. *Thayer v Britz*, 234 Mich 645, 647; 209 NW 50 (1926). "It is not an award upon which a judgment could be entered in the circuit court." *Id.* Additionally, an award is in dispute while review or appeal is pending. *Charpentier v Canteen Corp*, 105 Mich App 700, 705; 307 NW2d 704 (1981). Therefore, a judgment cannot be rendered on a matter while it is on appeal before the WCAC. *Cook v The Heartside, Inc*, 162 Mich App 236, 242; 412 NW2d 276 (1987). This finality requirement is necessary to give due deference to the exclusivity of the bureau's jurisdiction over compensation issues, remedies, and appeals. *Id.* at 241-242.

Although plaintiff had received a favorable ruling for payment of medical expenses that were reasonable and necessary, a fixed amount of compensation had not been established. Additionally, the director's determination was not final, but was challenged. Disputes regarding compensation are submitted to the bureau for resolution, MCL 418.841, and this authority is vested exclusively to the bureau. *Maglaughlin v Liberty Mutual Ins Co*, 82 Mich App 708, 710-711; 267 NW2d 160 (1978). Accordingly, the trial court erred in entering a judgment from an order by the magistrate that was in dispute and did not contain a fixed amount of compensation.¹

¹ We need not address defendant's request for costs, attorney fees and sanctions because the issue was not raised in the statement of questions presented, *Kirkaldy v Rim*, 251 Mich App 570, 584; 651 NW2d 80 (2002), and defendant failed to cite authority in support of its contention that the litigation was an abuse of process. *Mann v Mann*, 190 Mich App 526, 536-537; 476 NW2d 439 (1991). Furthermore, we note that the record reflects that the magistrate advised plaintiff that relief could be obtained by filing a circuit court action.

The judgment is vacated. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood